

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
)
North Dakota State Board of Medical)
Examiners - Investigative Panel A,)
)
Complainant,)
)
vs.)
)
Bruce J. McSurdy, M.D.,)
)
Respondent.)

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

.....

On February 28, 2003, a Complaint was filed with the North Dakota Board of Medical Examiners ("Board") by its Investigative Panel A requesting revocation of the license to practice medicine in North Dakota of the Respondent Bruce J. McSurdy, M.D. (hereinafter "McSurdy"). The complaint cites as grounds for revocation violations of N.D.C.C. § 43-17-31(28) and N.D. Admin. Code § 50-04-01-04. The statute provides that it is grounds for Board disciplinary action if a licensee fails to furnish to the Board or a Board investigative panel information legally requested by the Board or the Board investigative panel. The rule provides that failure to provide verification of compliance with continuing medical education ("CME") requirements and verification of attendance may subject a licensee to revocation of license.

On June 5, 2003, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On June 6, 2003, the undersigned ALJ was designated.

On June 11, 2003, the ALJ issued a Notice of Hearing. The hearing was held as scheduled on August 18, 2003, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel A was represented by Special Assistant Attorney General John M. Olson. Investigative Panel A called one witness, Mr. Rolf P. Sletten, the Board's Executive Secretary and Treasurer. McSurdy was not present at the hearing and was not represented by counsel at the hearing. Investigative Panel A offered three exhibits at the hearing, all of which were admitted.

Based on the evidence presented at the hearing, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. McSurdy is currently a physician licensed to practice Medicine in the State of North Dakota. McSurdy was first licensed by the Board on July 26, 1996. *See* Exhibit 1, May 1996 McSurdy Application. McSurdy stated in his application that he intended to practice in North Dakota at MedCenter One in Bismarck.
2. McSurdy currently resides at 17238 North Sandhill Road, North Platte, Nebraska 69101. At least, this is the address McSurdy gave as his address of residence to the Board in forms provided to the Board for his most recent renewal of license in June 2002.
3. McSurdy was personally served with the February 28, 2003, Complaint of Investigative Panel A by the Lincoln County (Nebraska) Sheriff's Office on April 28, 2003.
4. McSurdy was served by certified mail with the June 11, 2003, Notice of Hearing issued by the ALJ on June 16, 2003. The Notice of Hearing was mailed to McSurdy at his North Platte address. The return receipt ("green card") was signed by a "C. McSurdy"

5. In accordance with the requirements of N.D. Admin. Code ch. 50-04-01, the Board conducted an audit of randomly selected licensees in 2002. McSurdy was one of the licensees randomly selected in 2002. The Board sent McSurdy an August 23, 2002, letter requesting information verifying his CME and CME attendance. The letter was sent regular mail to McSurdy's North Platte address. Exhibit 1.

6. On October 2, 2002, the Board sent McSurdy a second letter, enclosing a copy of the August 23 letter, requesting McSurdy to provide verifying CME information within two weeks. The letter was sent regular mail to McSurdy's North Platte address. *Id.*

7. On October 25, 2003, the Board sent McSurdy a letter stating that his noncompliance would be reported to Investigative Panel A. The letter was sent certified mail to McSurdy's North Platte address. A "Catherine McSurdy" signed the return receipt. *Id.*

8. On December 6, 2003, at the request of Investigative Panel A, the Board sent McSurdy a letter asking him to voluntarily surrender his license to practice medicine in North Dakota by December 20, 2002, or face formal disciplinary action. The letter was sent certified mail to McSurdy's North Platte address. The return receipt was signed by a "Catherine McSurdy." *Id.*

9. On February 28, 2003, Investigative Panel A filed its Complaint with the Board and served it on McSurdy by mailing the Complaint to the Lincoln County Sheriff's Department and requesting sheriff's service on McSurdy. On April 28, 2003, the Sheriff's Department served McSurdy. *Id.*

10. The evidence shows, by the greater weight of the evidence, that McSurdy did not respond to any of the letters of the Board or Investigative Panel A requesting information from McSurdy about compliance with CME requirements and CME attendance, or show verification

of compliance with CME requirements and verification of CME attendance. The evidence shows that McSurdy did not respond to the Complaint of Investigative Panel A. The evidence shows that McSurdy did not contact counsel for Investigative Panel A or the ALJ about the scheduled hearing on the Complaint. McSurdy did not appear at the hearing and was not represented at the hearing by counsel.

CONCLUSIONS OF LAW

1. McSurdy is a physician currently licensed to practice medicine in the State of North Dakota
2. The evidence shows, by the greater weight of the evidence, that McSurdy violated the provisions of N.D.C.C. § 43-17-31(28), in that he failed to furnish the Board and its Investigative Panel A with information legally requested of him by the Board and its Investigative Panel A, *i.e.*, information requested about compliance with CME requirements and CME attendance.
3. The evidence shows, by the greater weight of the evidence, that McSurdy violated the provisions of N.D. Admin. Code § 50-04-01-04(2) in that he was a randomly selected physician required by the Board to provide verification of compliance with the state CME requirements for physicians and verification of CME attendance and failed to provide such verification.
4. Under N.D.C.C. § 43-17-30.1, the Board has authority to revoke McSurdy's license for violations of law stated in N.D.C.C. § 43-17-31, grounds for disciplinary action. Specifically, the Board may take action to revoke McSurdy's license because McSurdy violated

N.D.C.C. § 43-17-31(9) and (28). In regard to the violation of subsection 9, McSurdy violated the Board's rule, N.D. Admin. Code § 50-04-01-04(2).

5. Under N.D.C.C. § 43-17-31.1, in disciplinary actions against a physician, the Board may direct the physician to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case.

RECOMMENDED ORDER

The greater weight of the evidence shows that McSurdy violated the provisions of law as stated in the conclusions of law, above. The ALJ recommends that the Board revoke McSurdy's license to practice medicine in North Dakota and impose upon him payment of the costs of the disciplinary proceeding, i.e. the costs of the investigation and prosecution of the case as authorized under N.D.C.C. § 43-17-31.1.

Dated at Bismarck, North Dakota, this 19th day of August, 2003.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260